

3
4 AN ORDINANCE approving a contract for
5 Resolution 882-80, Dale Drive, between
6 the City of Fort Wayne, Indiana, and
7 Earth Construction & Engineering, Inc.,
8 for the construction of a main sewer.

9
10 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
11 WAYNE, INDIANA:

12 SECTION 1. That a certain contract, dated April 14, 1982
13 between the City of Fort Wayne, Indiana, by and through its Mayor
14 and the Board of Public Works and Earth Construction and Engin-
15 eering, Inc., for:

16 the construction of a main sewer, which from its
17 size and character is not only intended and
18 adapted for use by property holders whose property
19 abuts along the line of said sewer, but is also
20 intended and adapted for receiving drainage from
21 collateral drains already constructed or which
22 hereafter may be constructed; across a portion
23 of the southwest quarter of Section 27, Township
24 30 north, Range 12 east; bounded on the west by
25 the east right-of-way line of Bluffton Road;
26 bounded on the north by a line 200 feet south of
27 the south right-of-way line of Rehm Drive; bounded on
28 the south by a line 280 feet south of the south
29 right-of-way line of Dale Drive; commencing at
30 a point 18 $\frac{1}{2}$ feet north of the centerline on Rehm
31 Drive and 9 $\frac{1}{2}$ feet east of the centerline of Bluffton
Road; thence southerly a distance of 460 $\frac{1}{2}$ feet
in and along the right-of-way of Bluffton Road to
a point 7 $\frac{1}{2}$ feet west of the east right-of-way
line of Bluffton Road and 13 $\frac{1}{2}$ feet south of the
north right-of-way line of Dale Drive; thence
easterly a distance of 371 $\frac{1}{2}$ feet along a line
parallel to the centerline of Dale Drive to a
point located 44 $\frac{1}{2}$ feet east of the southwest
corner of Lot 68 in Elzey's 4th Addition.
Lateral #1 - Commencing at the proposed sewer along
Dale Drive; thence northerly 5 $\frac{1}{2}$ feet west of and
parallel to the east property line of Lot 82
of Elzey's 4th Addition a distance of 175 $\frac{1}{2}$ feet
terminating at a proposed structure located 190 $\frac{1}{2}$
feet north of the centerline of Dale Drive and
560 $\frac{1}{2}$ feet east of the centerline of Bluffton Rd.
Lateral #2 - commencing at the proposed sewer along
Dale Drive; and the west property line of Lot 78
of Elzey's 4th Addition 780 $\frac{1}{2}$ feet east of the
center line of Bluffton Road; thence southerly a

distance of 315+ feet terminating at an existing structure located 775+ feet east of the centerline of Bluffton Road and 295+ feet south of the centerline of Dale Drive.

Lateral #3 - commencing at the proposed sewer along Dale Drive 955+ feet east of the centerline of Bluffton Road; thence southerly a distance of 330+ feet terminating at a proposed structure 985+ feet east of the centerline of Bluffton Road and 310+ feet south of the centerline of Dale Drive.

Said sewer shall be 24, 18, 15, and 12 inches in diameter, with all its appurtenances shall be constructed in accordance with the plans, profiles, and specifications now on file in the office of the Department of Public Works of said city and shall be used for storm water purposes only,

10 under Board of Public Works Resolution No. 882-80, at a total
11 cost of \$152,833.00, all as more particularly set forth in said
12 Contract which is on file in the Office of the Board of Public
13 Works and is by reference incorporated herein and made a part
14 hereof, be and the same is in all things hereby ratified, con-
15 firmed and approved.

16 SECTION 2. That this Ordinance shall be in full force
17 and effect from and after its passage and approval by the Mayor.

APPROVED AS TO FORM AND
LEGALITY APRIL 23, 1982

~~BRUCE O. BOXBERGER, CITY ATTORNEY~~

DATE: 4-27-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Burns,
seconded by Jack, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	—	—	<u>1</u>	—
<u>BRADBURY</u>	<u>C</u>	—	—	—	—
<u>BURNS</u>	<u>C</u>	—	—	—	—
<u>EISBART</u>	<u>C</u>	—	—	—	—
<u>GiaQUINTA</u>	<u>C</u>	—	—	—	—
<u>NUCKOLS</u>	—	—	—	<u>C</u>	—
<u>SCHMIDT</u>	<u>C</u>	—	—	—	—
<u>SCHOMBURG</u>	<u>C</u>	—	—	—	—
<u>STIER</u>	<u>C</u>	—	—	—	—
<u>TALARICO</u>	<u>C</u>	—	—	—	—

DATE: 5-11-82

CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)
(APPROPRIATION) ORDINANCE (RESOLUTION) NO. 183-82
on the 11th day of May 1982

ATTEST:

(SEAL)

CHARLES W. WESTERMAN = CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 12th day of May, 1982, at the hour of
11⁰⁰ o'clock A.M. M. E. S. T.

CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 13th day of May
1982, at the hour of 4 o'clock P.M., E.S.T.

WIN MOSES, JR. - MAYOR

BILL NO. S-82-04-36

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN
ORDINANCE approving a contract for Resolution 882-80, Dale Drive,
between the City of Fort Wayne, Indiana, and Earth Construction &
Engineering, Inc., for the construction of a main sewer

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE *et* PASS

PAUL M. BURNS = CHAIRMAN

MARK E. GIAQUINTA = VICE CHAIRMAN

JAMES S. STIER

JANET G. BRADBURY

ROY J. SCHOMBURG

5-11-82

CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY

The construction of a main sewer, which from its size and character is not only intended and adapted for use by property holders whose property abuts along the line of said sewer, but is also intended and adapted for receiving drainage from collateral drains already constructed or which hereafter may be constructed; across a portion of the southwest quarter of Section 27, Township 30 north, Range 12 east; bounded on the west by the east right-of-way line of Bluffton Road; bounded on the north by a line 200 feet south of the south right-of-way line of Rehm Drive; bounded on the east by the west right-of-way line of Koester Drive; bounded on the south by a line 280 feet south of the south right-of-way line of Dale Drive; commencing at a point 18 $\frac{1}{2}$ feet north of the centerline on Rehm Drive and 9 $\frac{1}{2}$ feet east of the centerline of Bluffton Road; thence southerly a distance of 460 $\frac{1}{2}$ feet in and along the right-of-way of Bluffton Road to a point 7 $\frac{1}{2}$ feet west of the east right-of-way line of Bluffton Road and 13 $\frac{1}{2}$ feet south of the north right-of-way of Dale Drive; thence easterly a distance of 371 $\frac{1}{2}$ feet along a line parallel to the centerline of Dale Drive to a point located 44 $\frac{1}{2}$ feet east of the southwest corner of Lot 68 in Elzey's 4th Addition.

LATERAL #1 - commencing at the proposed sewer along Dale Drive; thence northerly 5 $\frac{1}{2}$ feet west of and parallel to the east property line of Lot 82 of Elzey's 4th Addition a distance of 175 $\frac{1}{2}$ feet terminating at a proposed structure located 190 $\frac{1}{2}$ feet north of the centerline of Dale Drive and 560 $\frac{1}{2}$ feet east of the centerline of Bluffton Road.

LATERAL #2 - commencing at the proposed sewer along Dale Drive; and the west property line of Lot 78 of Elzey's 4th Addition 780 $\frac{1}{2}$ feet east of the centerline of Bluffton Road; thence southerly a distance of 315 $\frac{1}{2}$ feet terminating at an existing structure located 775 $\frac{1}{2}$ feet east of the centerline of Bluffton Road and 295 $\frac{1}{2}$ feet south of the centerline of Dale Drive.

LATERAL #3 - commencing at the proposed sewer along Dale Drive 955 $\frac{1}{2}$ feet east of the centerline on Bluffton Road; thence southerly a distance of 330 $\frac{1}{2}$ feet terminating at a proposed structure 985 $\frac{1}{2}$ east of the centerline of Bluffton Road and 310 $\frac{1}{2}$ feet south of the centerline of Dale Drive.

Said sewer shall be 24, 18, 15, and 12 inches in diameter, with all its appurtenances shall be constructed in accordance with the plans, profiles, and specifications now on file in the office of the Department of Public Works of said city and shall be used for storm water purposes only.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$152,833.00 50% to paid by

the City and 50% paid by the property owners.

ASSIGNED TO COMMITTEE

W.M.W.

11-422-14

4/4/82

CONTRACT NO. 882-1980

Board Order No. 53-1980

THIS CONTRACT made and entered into in triplicate this 14th day of April, 1982, by and between Earth Construction and Engineering, Inc., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor, and the Board of Public Works herein called OWNER,

WITNESSETH that the Contractor and the Owner for the considerations hereinafter named, agrees as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the installation of the following:

Dale Drive Storm Sewer Resolution No. 882-1980

all according to Fort Wayne Pollution Control Engineering Department Drawing No. SY-11078, Sheets 1 thru 10, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the contract the unit price sum of \$152,833.00. In event the amount of work is increased or decreased by Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by Owner upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Engineering Department of the Owner, less the aggregate of previous payments, will be paid by Owner to the Contractor.

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the Owner to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted thereupon, and the entire balance of the Contract sum shall be due and payable to the Contractor; provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid.

ARTICLE 5. WORKMEN'S COMPENSATION ACT

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of State of Indiana and Ordinances of City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.

ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bounded by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978, a copy of which Section is attached and incorporated herein and made a part hereof. (NE/1 - NE/3)

ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Statutes of Indiana and Ordinances of City of Fort Wayne, attached hereto and made a part hereof. (WR/1).

ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- A. Advertisement for Bids, for Contract No. 882-1980.
- B. Instructions to Bidders for Contract No. 882-1980.
- C. Contractor's Proposal Dated
- D. Fort Wayne Water Pollution Control Engineering Department Construction Drawing No. SY-11078.
- E. General Specifications and Conditions, detailed specifications, construction standards for the installation of storm and sanitary sewers adopted July 23, 1980 and addendums thereof of the City of Fort Wayne's Water Pollution Control Engineering Department.
- F. Special Provisions.
- G. Workmen's Compensation Act Statutes of State of Indiana and Ordinances of City of Fort Wayne.
- H. Non Discrimination of labor General Ordinance No. G-34-78 (as amended).
- I. Prevailing wage scale.
- J. Performance Bond.
- K. Labor and Material Payment Bond.
- L. Comprehensive Liability Insurance Coverage.
- M. Application for Cut Permit.
- N. Escrow Agreement.
- O. Notice of Award.
- P. Notice to Proceed.
- Q. Change Order.
- R. Notice of Final Acceptance.

ARTICLE 9. GUARANTEE OF WORKMANSHIP

The Contractor shall warrant all materials, labor and equipment furnished and work performed for a period of one (1) year from date of final acceptance in writing by the Owner.

ARTICLE 10. INDEMNITY

Contractor shall furnish to owner, within ten (10) days of the date hereof a certificate from an insurer acceptable to owner showing personal injury and property damage. Insurance inforce issued in connection with the work to be done under this Contract in accordance with said Specifications of the City of Fort Wayne, Division I, Section 7.2.2.

ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Pollution Control Department, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases or the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified in the within contract in 180 consecutive calendar days after having been ordered by the Owner to commence work under this contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BY: Jack Braun
Jack Braun, President

BY: Gerald Osterman
Gerald Osterman, Secretary

CITY OF FORT WAYNE, INDIANA
BY: Win Moses
Win Moses, Jr., Mayor

ATTEST:

Sandra E. Kennedy
Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY:

R. J. Snouffer
ASSOCIATE CITY ATTORNEY

BOARD OF PUBLIC WORKS

Stephen A. Bailey
Stephen A. Bailey, Chairman

Roberta Anderson
Roberta Anderson Staten, Member

Betty Collins, Member

Approved by the Common Council of the City of Fort Wayne on _____ day of
_____, 1982.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT made and entered into this _____ day of _____, 19____, by and between _____ (herein called Escrow Agent), City of Fort Wayne, Indiana (herein called Owner), and Earth Construction and Engineering, Inc., (herein called Contractor).

WHEREAS, Owner and Contractor entered into a contract dated _____, providing for the construction by the Contractor of a public building, work or improvement subject to the provisions of IC 1971, 5-1605.5; and

WHEREAS, said construction contract provides that portions of payments by Owner to Contractor shall be retained by Owner (herein called Retainage) and placed in an escrow account;

NOW, THEREFORE, it is agreed as follows:

1. Owner will hereafter deliver or cause to be delivered to Escrow Agent the Retainage, to be held in escrow in accordance with the terms of this agreement.
2. Escrow Agent will promptly invest the Retainage in such obligations as selected by the Escrow Agent at its discretion. All income earned on such funds shall be added to and become a part of the escrowed principal.
3. The Escrow Agent shall pay over the net sum held by it hereunder as follows:
 - a. In the manner directed by the joint written authorization of the Owner and Contractor.
 - b. In the absence of such a joint written authorization, upon receipt from the Owner of a copy of the Architect's certificate or Architect-Engineer's certificate pursuant to Article 2.2.01e of the General Conditions showing that the Owner has terminated the employment of the Contractor, then the Escrow Agent shall pay over to the Owner the net sum held by it hereunder.

c. In the absence of such a joint written authorization and in the absence of the termination of the Contractor as provided in (b) above, in the manner directed by a certified copy of a judgment of a court of record establishing the rights of the parties to said funds.

4. This Escrow Agreement shall constitute the direction from the Owner and Contractor to the Escrow Agent of the Manner in which the Retainage is to be paid by the Escrow Agent, pursuant to IC 1971 5-16-5.5.

5. The Escrow Agent shall deduct, before any payment from the amounts received hereunder, its fee as Escrow Agent, which fee shall be computed as follows:

- a. A charge of _____ for the first twelve month period, such charge to be assessed at the end of the first year or upon termination of the agreement
- b. An additional charge of _____ for the second twelve month period, such charge to be assessed at the end of the second year or upon termination of the agreement
- c. If the agreement is still in effect two years from the initial investment date, charges for periods beyond two years shall be renegotiated.

Provided, however, that the escrow fee shall be commensurate with fees now being charged for the handling of escrow accounts of like size and duration.

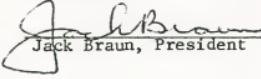
6. This Agreement and anything done or performed hereunder by either the Contractor or Owner shall not be construed to prejudice or limit the claims which either party may have against the other arising out of the aforementioned construction agreement.

7. This instrument constitutes the entire agreement between the parties regarding the duties of the Escrow Agent with respect to the investment and payment of escrow funds; the Escrow Agent is not liable to the Owner and Contractor for any loss or damages not caused by its own negligence or willful misconduct.

(ESCROW AGENT)

BY _____

Earth Construction & Engineering, Inc.
(CONTRACTOR)


Jack Braun, President

(OWNER)

ITS BOARD OF PUBLIC WORKS
CITY OF FORT WAYNE, INDIANA

AUTHORIZATION OF PAYMENT

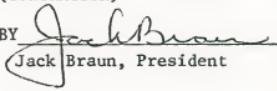
The undersigned Owner and Contractor hereby direct _____ ("Escrow Agent") to advance to the Contractor the sum of _____ Dollars (\$_____) pursuant to Section 3 of the Escrow Agreement dated _____, 19_____, by and between the aforementioned parties, including accrued income, less the escrow fee.

(OWNER)

BY _____

Its Board of Public Works

Earth Construction & Engineering, Inc.
(CONTRACTOR)

BY 
Jack Braun, President

DO NOT SIGN

WAIVER OF RIGHT TO HAVE ESCROW FUNDS DEPOSITED
IN INTEREST BEARING ACCOUNT

THIS AGREEMENT, made this _____ day of _____, 19_____,
by and between Earth Construction and Engineering, Inc., Contractor, and City of
Fort Wayne, Owner;

WITNESSETH:

WHEREAS, Contractor and Owner have entered into the contract dated
_____ for the construction of _____;
and

WHEREAS, by the terms of said contract, Owner is entitled to retain portions
of the payments due and to become due to the Contractor on account of said work;
and

WHEREAS, Contractor has the right to have said funds placed in an interest
bearing escrow account; and

WHEREAS, Contractor desires to waive said right and agrees to accept the
principal only when due of said funds so retained.

NOW, THEREFORE, Contractor on behalf of himself and all of his subcontractors,
workmen and materialmen, does hereby waive his right to have retainage placed in
an interest bearing account.

Owner agrees to retain and hold said funds and to pay the same when due
without interest thereon.

Contractor

CITY OF FORT WAYNE
BOARD OF PUBLIC WORKS
BY _____
BY _____
BY _____

NOTICE OF AWARD

TO: Earth Construction and Engineering, Inc.

3333 Engle Road

Fort Wayne, IN 46809

PROJECT Description: Dale Drive - Storm Sewer, Resolution No. 882-1980

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated February 19 and 26, 1982, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$152,833.00. (Provisions added here).

You are required by the Information for Bidders to execute the Agreement and furnish the required Contractor's Performance Bond and Payment Bond within ten calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said bonds within ten days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your Bid Bond. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 19_____.

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

Owner

BY _____

TITLE _____

by Jack Braun,

this the _____ day

of _____ 19 _____

BY Jack Braun

Title President

NOTICE TO PROCEED

To: Earth Construction and
Engineering, Inc.

Date: _____
Project: Dale Drive -
Storm Sewer, Resolution No. 882-1980

You are hereby notified to proceed in accordance with your contract dated
_____, 19____, on the project and you are to complete the project
within _____ consecutive calendar days thereafter.
Therefore, the date for the completion of this project is _____,
19_____.

Owner:
BOARD OF PUBLIC WORKS

Stephen A. Bailey, Chairman

Roberta Anderson Staten, Member

Betty R. Collins, Member

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO
PROCEED is hereby acknowledged by

Jack Braun _____,
this the _____ day
of _____, 19_____

BY Jack Braun
Title President

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that

Earth Construction and Engineering, Inc.
3333 Engle Road, Fort Wayne, Indiana 46809

a Corporation hereinafter called

Principal, and American States Insurance Company
(Name of Surety)

P.O. Box 136, Indianapolis, Indiana 46206
(Address of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held firmly bound unto the City of Fort Wayne, Indiana, an Indiana Municipal Corporation in the penal sum of one hundred and fifty-two thousand eight hundred and thirty-three and 00/100 dollars (\$152,833.00) (value of work) for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by those present.

The condition of the foregoing obligation is such that:

WHEREAS, the Principal entered into certain contract with the City, dated the 14th day of April, 1982, for construction of:

Dale Drive Storm Sewer Resolution #882-1980

all according to Fort Wayne Water Pollution Control Engineering Department Drawing No. SY-11078 Sheet(s) 1 through 10 and special provisions and according to the City of Fort Wayne's Specifications and Standard Drawings and Addendums, adopted July 23, 1980 and

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alternation, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the City and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in 3
(number)

counterparts, each one of which shall be deemed an original, this 14th
day of April, 1982.

ATTEST:

Donald W. Osterman
(Principal) Secretary

[SEAL]

Patricia J. Helms
(Witness as to Principal)

3333 Engle Road
(Address)

Fort Wayne, IN 46809

Earth Construction & Engineering, Inc.
(Principal)

BY: Jack Braun [s]
Jack Braun

3333 Engle Road
(Address)

Fort Wayne, IN 46809

American States Insurance Company
Surety

ATTEST:

(Surety) Secretary
[SEAL]
David Mirokowits
Witness as to Surety
1721 Magnavox Way
PO Box 885
(Address)

Fort Wayne, Indiana 46801

By David Mirokowits
Attorney-in-Fact
1721 Magnavox Way
(Address)

PO Box 885, Fort Wayne, Indiana 46801

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute bond.

American States Insurance Company

INDIANAPOLIS, INDIANA

KNOW ALL MEN BY THESE PRESENTS, that American States Insurance Company, a Corporation duly organized and existing under the laws of the State of Indiana, and having its principal office in the City of Indianapolis, Indiana, hath made, constituted and appointed, and does by

these presents make, constitute and appoint GERALD C. KRAMER, BERNARD M. NIEZER, LOUIS H. ANDREWS,
CURTIS C. HILL, GERALD C. KRAMER, JR., FRED L. TAGTMAYER AND WALTER E. MANSKE-----

(Jointly or Severally)

of Fort Wayne and State of Indiana
 its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and
 deliver any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings, provided,
however, that the penal sum of any one such instrument executed hereunder shall
not exceed TWO MILLION AND NO/100 (\$2,000,000.00) DOLLARS-----

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. This Power of Attorney is executed and may be revoked pursuant to and by authority granted by Section 7.07 of the By-Laws of the American States Insurance Company, which reads as follows:

"The Chairman of the Board, the President or any Vice-President shall have power, by and with the concurrence with the Secretary or any Assistant Secretary of the Corporation, to appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact as the business of the Corporation may require or to authorize any one of such persons to execute, on behalf of the Corporation, any bonds, recognizances, stipulations and undertakings, whether by way of surety or otherwise".

IN WITNESS WHEREOF, American States Insurance Company has caused these presents to be signed by its Vice-President, attested by its

Assistant Secretary and its corporate seal to be hereto affixed this 29th day of January

A. D. 19 82

(SEAL)

ATTEST:

STATE OF INDIANA } SS:
 COUNTY OF MARION }

Assistant Secretary

AMERICAN STATES INSURANCE COMPANY

By Alanson T. Abel

Assistant Vice-President

On this 29th day of January, A. D. 19 82, before me personally came

Alanson T. Abel

being by me duly sworn, acknowledged the execution of the above instrument and did depose and say: that he is a Vice-President of American States Insurance Company; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said Corporation; and that he signed his name thereto under like authority. And said

Alanson T. Abel further said that he is acquainted with Thomas M. Ober and knows him to be the Assistant Secretary of said Corporation; and that he executed the above instrument.

MY COMMISSION EXPIRES

February 14, 1984

STATE OF INDIANA } My Commission Expires

COUNTY OF MARION } SS:

Notary Public

Wally J. Foster

Thomas M. Ober, the Assistant Secretary of AMERICAN STATES INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said AMERICAN STATES INSURANCE COMPANY, which is still in full force and effect.

This Certificate may be signed and sealed by facsimile under and by the authority of Section 8.03 of the By-Laws of AMERICAN STATES INSURANCE COMPANY which reads as follows:

"All policies and other instruments of insurance issued by the Corporation shall be signed on behalf of the Corporation by the president or a vice-president and the secretary or an assistant secretary, whose signatures, if the instrument is duly countersigned by an authorized representative of the Corporation, may be facsimiles. Such signatures and facsimiles thereof shall be authorized and binding upon the Corporation notwithstanding the fact that any such officer shall have ceased to be such officer at the time such policy or other instrument of insurance shall have been actually issued by the Corporation."

In witness whereof, I have hereunto set my hand and affixed the seal of said Corporation, this 14th day of April,

A. D. 19 82

(SEAL)

Form 9-1459 (8-80)

Thomas M. Ober

Assistant Secretary

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

Earth Construction and Engineering, Inc.

3333 Engle Road

a Corporation, (Corporation, Partnership or Individual), hereinafter called Principal,
and American States Insurance Company
(Name of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held and firmly bound unto the City of Fort Wayne, and Indiana Municipal Corporation in the penal sum of one hundred and fifty-two thousand eight hundred and thirty-three and 00/100 Dollars (\$152,833.00) (value of work) for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 14th day of April 19 82, for the construction of:

Dale Drive Storm Sewer
Resolution No. 882-1980

all according to Fort Wayne Water Pollution Control Engineering Department Drawing No. SY-11078, Sheet(s) 1 through 10 and special provisions, and according to the City of Fort Wayne's Specifications and Standard Drawings and Addendums, adopted July 23, 1980.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery,

equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed 3 counterparts,
(number)
each one of which shall be deemed an original, this 14th day of
April, 19 82.

ATTEST:

John W. Colman
(Principal) Secretary

[SEAL]

Patricia J. Hane
Witness as to Principal

3333 Engle Road
(Address)
Fort Wayne, IN 46809

ATTEST:

(Surety) Secretary
[SEAL]
Patricia J. Hane
Witness as to Surety

1721 Magnavox Way
(Address)
PO Box 885, Fort Wayne, Indiana 46801

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute bond.

Earth Construction & Engineering, Inc.
Principal

By Josh Brown [S]
3333 Engle Road
(Address)

Fort Wayne, IN 46809

American States Insurance Company
Safety
By Patricia J. Hane
Attorney-in-Fact

1721 Magnavox Way
(Address)

PO Box 885, Fort Wayne, Indiana 46801

American States Insurance Company

INDIANAPOLIS, INDIANA

KNOW ALL MEN BY THESE PRESENTS, that American States Insurance Company, a Corporation duly organized and existing under the laws of the State of Indiana, and having its principal office in the City of Indianapolis, Indiana, hath made, constituted and appointed, and does by

these presents make, constitute and appoint GERALD C. KRAMER, BERNARD M. NIEZER, LOUIS H. ANDREWS,
CURTIS C. HILL, GERALD C. KRAMER, JR., FRED L. TAGTMAYER AND WALTER E. MANSKE-----

(Jointly or Severally)

of Fort Wayne and State of Indiana
 its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and

deliver any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings, provided,
however, that the penal sum of any one such instrument executed hereunder shall

not exceed TWO MILLION AND NO/100 (\$2,000,000.00) DOLLARS-----

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-In-Fact may do in the premises. This Power of Attorney is executed and may be revoked pursuant to and by authority granted by Section 7.07 of the By-Laws of the American States Insurance Company, which reads as follows:

"The Chairman of the Board, the President or any Vice-President shall have power, by and with the concurrence with the Secretary or any Assistant Secretary of the Corporation, to appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact as the business of the Corporation may require or to authorize any one of such persons to execute, on behalf of the Corporation, any bonds, recognizances, stipulations and undertakings, whether by way of surety or otherwise".

IN WITNESS WHEREOF, American States Insurance Company has caused these presents to be signed by its Vice-President, attested by its

Assistant Secretary and its corporate seal to be hereto affixed this 29th day of January

A. D. 19 82

(SEAL)

ATTEST: Thomas M. Ober

Assistant Secretary

STATE OF INDIANA
 COUNTY OF MARION } SS:

AMERICAN STATES INSURANCE COMPANY

By Alanson T. Abel

Assistant Vice-President

On this 29th day of January, A. D. 19 82, before me personally came

Alanson T. Abel

being by me duly sworn, acknowledged the execution of the above instrument and did depose and say; that he is a Vice-President of American States Insurance Company; that he know the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said Corporation; and that he signed his name thereto under like authority. And said

Alanson T. Abel further said that he is acquainted with Thomas M. Ober and knows him to be the Assistant Secretary of said Corporation; and that he executed the above instrument.

MY COMMISSION EXPIRES

February 14, 1984

My Commission Expires

STATE OF INDIANA
 COUNTY OF MARION } SS:

Sally J. Foster

Notary Public

I, Thomas M. Ober, the Assistant Secretary of AMERICAN STATES INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said AMERICAN STATES INSURANCE COMPANY, which is still in full force and effect.

This Certificate may be signed and sealed by facsimile under and by the authority of Section 8.03 of the By-Laws of AMERICAN STATES INSURANCE COMPANY which reads as follows:

"All policies and other instruments of insurance issued by the Corporation shall be signed on behalf of the Corporation by the president or a vice-president and the secretary or an assistant secretary, whose signatures, if the instrument is duly countersigned by an authorized representative of the Corporation, may be facsimiles. Such signatures and facsimiles thereof shall be authorized and binding upon the Corporation notwithstanding the fact that any such officer shall have ceased to be such officer at the time such policy or other instrument of insurance shall have been actually issued by the Corporation."

In witness whereof, I have hereunto set my hand and affixed the seal of said Corporation, this 14th day of April,

A. D. 19 82

(SEAL)

Form 9-1459 (B-80)

Thomas M. Ober

Assistant Secretary